

Application No. 10/028,027

Response dated February 1, 2006

Reply to Office Action dated November 1, 2005

### **REMARKS**

Claims 1-5 and 7-23 are pending in the instant application. In the office action mailed November 1, 2005, the Examiner allowed claims 7-23. Applicants appreciate the Examiner's recognition of the allowability of these claims. Also in the office action mailed November 1, 2005, the Examiner rejected claims 1-6.

Claim 6 has been canceled as it appears to be duplicative of claim 20 which the Examiner has previously acknowledged as being allowable because the "prior art of record fails to anticipate or render obvious an absorbent article comprising a composition on at least a portion of a bodyfacing surface of a bodyside liner that includes from 40-95% by weight of emollient, from 0.1-40% by weight of viscosity enhancer and from about 0.1-20% by weight of silicone elastomer." (Office Action dated 5/19/2005, page 4).

Based on the remarks made herein, Applicants respectfully request that the rejection as to claims 1-5 be withdrawn and the case be passed to allowance.

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### **Response to Rejections**

**By way of the Office Action mailed November 1, 2005, claims 1-5 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated and thus unpatentable over U.S. patent number 6,492,574 to Chen et al. (hereinafter "*Chen*"). This rejection is respectfully traversed.**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. *Chen* fails to teach each and every element of claim 1 of the present invention, either expressly or inherently, and is therefore an improper basis for an anticipation reference. This rejection should be withdrawn.

Applicants' claim 1 requires a composition on at least a portion of the bodyfacing surface of the bodyside liner wherein the composition has a Tangent Delta value of from about 0.10 to about 0.65 measured over a temperature range of 35 to 40 degrees Celsius according to a Tangent Delta Measurement Procedure. This element is not set forth, either expressly or inherently, in *Chen*. Therefore *Chen* fails to anticipate Applicants' claim 1 and the rejection should be withdrawn.

In rejecting claim 1, the Examiner contends that *Chen* discloses this element at column 18, lines 25-35 and column 31, line 52 to column 32, line 6. The Examiner further contends "that Chen et al. disclose the specifics of the composition thereby providing a composition that will yield similar results when subjected to the Tangent Delta Measurement Procedure." (Office Action at page 3, emphasis added). Applicants respectfully disagree.

*Chen* states at column 18, lines 25-35 (hereinafter "first cited section") that:

The central rising member 30 can be a flexible absorbent material such as densified airlaid webs comprising pulp fibers and thermoplastic binder particles, coform, or one or more layers of creped or uncreped tissue. Many other materials can be used to construct a central rising member. Moldable foams can be used, such as a polyethylene foam sheet creased or scored to provide bending lines therein. Other suitable foams are made from such substances as polyethylene, polypropylene, polybutylene, ethylene vinyl acetate, polyurethane, thermobondable cellulose, silicone elastomerics and others.

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*Chen* further states at column 31, line 52 to column 32, line 6 (hereinafter "second cited section") that:

Other components may be combined with the cellulosic materials of the absorbent core or added as separate layers or portions of the article. Such other components include odor absorbing components such as baking soda, talc powder, cyclodextrin, ethylenediamine tetra-acetic acid, zeolites, activated silica, and activated carbon granules, fabrics or fibers; superabsorbent particles and fibers; fluoropolymers; antimicrobial agents including the silver-loaded zeolites of BF Technologies, located in Beverly, Mass., sold under the trademark HEALTHSHIELD®, as well as triclosan products, chitosan or chitin derivatives (useful principles for application of chitosan finishes to nonwoven webs and cellulosic fibers are described by S. Lee et al., "Antimicrobial and Blood Repellent Finishes for Cotton and Nonwoven Fabrics Based on Chitosan and Fluoropolymers," *Textile Research Journal*, 69 (2): 104-112, Feb. 1999); polycarboxylic acids; encapsulated perfumes; emollients such as lanolin; or skin wellness agents such as aloe vera extract (particularly aloe vera powder combined with a polyhydroxy softener) or vitamin E. Thermoplastic binder fibers may be added, with or without subsequent heat treatment for improved stability.

As best understood by Applicants, the Examiner is making an inherency rejection in concluding that *Chen* discloses "the specifics of the composition thereby providing a composition that will yield similar results when subjected to the Tangent Delta Measurement Procedure." However, when relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied art. M.P.E.P. 2112 (IV). The Examiner has failed to meet this burden because summarily concluding that "the specifics of the composition" are taught by *Chen* does not provide a basis in fact or technical reasoning that would support a rejection based on inherency.

The first cited section describes alternative materials for the central rising member 30. This section has nothing to do with compositions located on at least a portion of the topsheet having a Tangent Delta value of from about 0.10 to about 0.65 measured over a temperature range of 35 to 40 degrees Celsius. Therefore, this section provides no basis in fact for the Examiner's conclusion.

The second cited section describes alternative materials in the absorbent core. (col. 31, line 12). This section does mention "emollients such as lanolin; or skin wellness agents such

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as aloe vera extract (particularly aloe vera powder combined with a polyhydroxy softener) or vitamin E" but in no way discloses the "specifics" of Applicants' composition as contended by the Examiner. The Examiner has provided no technical reasoning as to why *Chen's* "skin wellness agents" necessarily would have a Tangent Delta value of from about 0.10 to about 0.65 as measured over a temperature range of 35 to 40 degrees Celsius according to a Tangent Delta Measurement Procedure. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. M.P.E.P. 2112.

The Examiner need only review Applicants' specification to appreciate that not all compositions inherently have a Tangent Delta value of from about 0.10 to about 0.65. Samples of exemplary compositions having Tangent Delta values outside the claimed range are summarized in Table 3 on page 41 of Applicant's disclosure. Therefore, the Examiner has not met the burden necessary to make a *prima facie* case of inherency. Applicants respectfully request that this rejection be withdrawn.

If the Examiner continues to maintain this rejection, Applicants respectfully request more detailed rationale and evidence tending to show inherency so that Applicants may more precisely respond to the Examiner's rejection.

**By way of the Office Action mailed November 1, 2005, claim 6 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious and thus unpatentable over U.S. patent number 6,492,574 to Chen *et al.* (hereinafter "*Chen*"). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.**

Claim 6 has been canceled thereby rendering this rejection moot.

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Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.  
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Respectfully submitted,

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